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Filing date: **01/25/2010**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91166487
Party	Defendant Creative Action, LLC
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Date	01/25/2010
Attachments	Resp to Hasbro's Motion to Amend.pdf (51 pages)(2630367 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Application Serial No. 78/359,895
Filed: January 30, 2004
For the Mark: MEMORY MAGIC in International Class 28
Published in the Official Gazette: May 10, 2005 at TM 30

<p>HASBRO, INC.</p> <p>Opposer,</p> <p>v.</p> <p>CREATIVE ACTION LLC,</p> <p>Applicant</p>	<p>Opposition No. 91/166487</p>
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**CREATIVE ACTION LLC'S RESPONSE TO OPPOSER'S MOTION TO AMEND
OPPOSER'S NOTICE OF OPPOSITION AND TO SUSPEND THE PROCEEDINGS**

Creative Action LLC ("Creative Action") hereby responds to Hasbro Inc.'s ("Hasbro") Motion to Amend Opposer's Notice of Opposition and to Suspend the Proceedings.

OVERVIEW

In its brief, Hasbro admits that no likelihood of confusion exists between the parties' products. In view of this admission, Creative Action eventually will prevail in the opposition after the issue of identification of goods has been resolved.

Hasbro received Creative Action's interrogatory answers and document production well over three years ago. At that time, Hasbro learned all essential details concerning the MEMORY MAGIC product and how it was being marketed. In order to justify its unreasonable delay in filing the present motion, Hasbro now falsely claims that it "only recently learned of the significant differences between the parties' products." Creative Action has been extremely prejudiced by Hasbro's delay.

Hasbro has failed to show that Creative Action's identification of its goods as a "therapeutic game" is inaccurate or that the goods are not properly classified in International Class 28. Hasbro also has failed to establish the basis for an amendment pursuant to Section 18 of the Lanham Act, namely, that its proposed amendment will avoid a finding of likelihood of confusion. Not only should Hasbro's motion to amend be denied, but its motion to suspend the proceedings and further delay this matter also should be denied.

1. HASBRO HAS ADMITTED THAT NO LIKELIHOOD OF
CONFUSION EXISTS BETWEEN THE PARTIES' PRODUCTS

Hasbro has admitted that due to differences between the parties' products and how they are marketed, there is no likelihood of confusion. See Hasbro brief at page 2 ("likelihood of confusion - . . . there is none."), page 4 ("there is little to no likelihood of confusion"), and page 10 ("[no] likelihood of confusion between the parties' actual products."). Since Hasbro has admitted that no likelihood of confusion exists, Creative Action will prevail in the opposition after the issue of identification of goods has been resolved.¹

2. HASBRO'S MOTION SHOULD BE DENIED BECAUSE IT WAS
FILED UNTIMELY AND CREATIVE ACTION HAS BEEN PREJUDICED

In an attempt to justify its delay in filing the present motion, Hasbro claims that it only recently learned the essential details of Creative Action's product and how it has been marketed (see Hasbro Br. at p. 1, 3, 4, and 9), but that claim is demonstrably false.

¹ Dismissal of the opposition will not affect Creative Action's pending counterclaim because the termination of proceedings concerning an opposition does not result in termination of a counterclaim. Pursuant to Section 606 of the TBMP, "[i]f, prior to the determination of a counterclaim, . . . the original claim is withdrawn, dismissed for failure to prosecute, or otherwise disposed of, the counterclaim will nevertheless go forward . . ." *Syntex (U.S.A.) Inc. v. E.R. Squibb & Sons Inc.*, 14 U.S.P.Q.2d 1879, 1880 (TTAB 1990) (opposition dismissed with prejudice; applicant elected to go forward with counterclaim to cancel opposer's registration and had standing to do so). See also, *Lipton Indus., Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 U.S.P.Q. 185 (CCPA 1982).

Creative Action served its interrogatory answers and non-confidential document production on Hasbro in April, 2006. Declarations of Wayne D. Porter, Jr. ("Porter Decl.") ¶¶ 3 and 4, and Ronni S. Sterns ("Sterns Decl.") ¶ 6, attached hereto as Exhibits A and B, respectively.

The interrogatory answers and documents gave Hasbro a crystal-clear picture of Creative Action's product and how it was marketed. For example, interrogatory answer no. 2(e) stated that the actual or intended class of clients or consumers for the product was "[l]ong-term care facilities, adult day care centers, home health care agencies, psychiatric hospitals and units, and care givers of older adults with dementia, head trauma or stroke who live at home." Porter Decl., Ex. 1. Interrogatory answer no. 2(d) stated that the channels of trade for MEMORY MAGIC are "[t]rade show exhibits, direct marketing, and distributors of products to the health and long term care industries." *Id.*

In addition to interrogatory answers, Creative Action's documents included a set of directions for playing the game, complete with product illustrations and a step-by-step example of game play. Porter Decl., Ex. 2, p. 471-74. The documents included a marketing brochure that (1) discussed the features and benefits of the product, (2) compared the game with bingo, (3) provided suggestions for staff and volunteers, (4) listed a number of clients in various states that were using the product as part of a care plan, (4) provided cost analysis and staff considerations, (5) provided research outcomes, (6) listed conferences and conventions where the product was exhibited, and (7) provided endorsements from numerous health care facilities. *Id.*, p. 455-66. The documents informed Hasbro that the cost of the product was \$399.00. *Id.*, p. 461 and 546.

While it is true that Hasbro received the MEMORY MAGIC product and took the deposition of Creative Action's principal, Dr. Ronni Sterns, in October, 2009, it also is true, as shown by the interrogatory answers and documents attached hereto, that

Hasbro possessed the information needed to support the present motion in April, 2006. The subsequent suspensions of the discovery period had no bearing on the merits of the present motion and the timing of its filing. The first suspension did not occur until August 4, 2006, approximately four months after Hasbro had the information needed to file the present motion. Prior to suspension of the proceeding, testimony periods had been set and discovery was ongoing.

Leave to amend a pleading shall be freely given when justice so requires. Civil Rule 15(a). Nevertheless, undue delay between the filing of a complaint and a motion to amend may amount to prejudice that would be grounds for denying a motion to amend. *Zahra v. Town of Southold*, 48 F.3d 674, 685-86 (2d Cir. 1995)(motion to amend appropriately denied as constituting undue delay when made two and one-half years after commencement of action); *Sohk Sportswear, Inc. v. K.S. Trading Corp.*, 2003 U.S. Dist. LEXIS 16700 (S.D.N.Y. 2003)(delay of 15 months and nearing completion of discovery deemed to be prejudicial); *NAS Elecs., Inc. v. Transtech Elecs. Pte Ltd.*, 262 F. Supp. 2d 134, 2003 U.S. Dist. LEXIS 8473 (S.D.N.Y. 2003)(delay of nearly two years and after completion of discovery deemed to be prejudicial).

Here, Hasbro waited the better part of four years to file its motion to amend. Indeed, the motion was filed one day before the close of discovery. If Hasbro had moved to amend its notice of opposition in April, 2006 or shortly afterwards, and such motion had been resolved at that time, Creative Action would have been spared significant litigation expense, delay, and uncertainty.² There would have been no need for Dr. Sterns to be deposed, with the attendant preparation time, inconvenience, and expense. Creative Action also would have been issued a registration certificate a long

² Hasbro cannot claim that it was distracted and not able to address the present matter in April, 2006 because it was involved in litigation with MGA Entertainment, Inc. Hasbro did not file suit against MGA until May 26, 2006.

time ago. Thus, Hasbro's delay in filing the present motion has been extremely prejudicial to Creative Action.

3. EVEN IF CREATIVE ACTION'S IDENTIFICATION OF GOODS WERE TO BE AMENDED, HASBRO'S PROPOSED LANGUAGE IS TOO RESTRICTIVE

The identification of goods proposed by Hasbro is as follows:

"therapeutic activity kit intended for use by nursing homes and other elderly care facilities to promote the use of cognitive abilities by elderly person with memory loss, comprised of cards that contain questions and related prompts for discussion, cards that contain an array of potential answers to the questions, and boards used by participants"

Creative Action's product is not a "kit" by any definition of the word. See Webster's Ninth New Collegiate Dictionary 663 (1988)(a "kit" is, inter alia, a "collection of articles usually for personal use" or "a packaged collection of related material"). As will be pointed out infra, the product more appropriately is called a "therapeutic game." Sterns Decl., ¶ 8.

Although the MEMORY MAGIC product is "intended for use by nursing homes and other elderly care facilities," it is not so limited. It can be used in any environment, including the home. *Id.*, at ¶ 9.

The product is not limited to use by "elderly" persons with memory loss. While many users can be expected to be elderly, the product can be used by anyone with memory loss. *Id.*, at ¶ 10.

The product does not require "boards used by participants." While the use of boards facilitates play of the game, their use is not necessary. *Id.*, at ¶ 11.

In view of the foregoing, it is apparent that Hasbro's suggested identification of goods is too restrictive.

4. CREATIVE ACTION'S IDENTIFICATION OF GOODS IS ACCURATE
AND NO AMENDMENT IS NECESSARY OR PROPER

Not only is Hasbro's proposed identification of goods too restrictive, there is no basis to amend the identification in the first place. The identification of goods in Creative Action's application is as follows:

"therapeutic game in the nature of a trivia game and a bingo game for engaging persons with memory loss consisting of game cards that contain answers to questions and calling cards that contain questions and information related thereto"

Creative Action's identification of goods is entirely accurate and should not be amended because it suits Hasbro's purposes.

(a) Creative Action's product is therapeutic.

The dictionary definition of "therapeutic" is "of or relating to the treatment of disease or disorders by remedial agents or methods." Webster's Ninth New Collegiate Dictionary 1223 (1988). The dictionary definition of "game" includes "1 a (1): activity engaged in for diversion or amusement: PLAY (2): the equipment for a game . . ."³ *Id.*, at 504. By dictionary definition, there is no question that the MEMORY MAGIC product is a therapeutic game.

The product is therapeutic because it can alleviate some symptoms of dementia while individuals are engaged playing the game. As pointed out in the attached declaration of Dr. Ronni Sterns, Creative Action has conducted research that indicates significant increases in levels of engagement and affect (mood) and significant decreases in problem behaviors among MEMORY MAGIC game participants while playing the game compared to levels of engagement, affect and behavior problems when these same individuals are participating in other games and activities. Sterns

³ An activity can also be competitive, with a winner and a loser, and still be called a "game." The dictionary definition of "game" includes: "3 a (1): a physical or mental competition conducted according to rules with the participants in direct opposition to each other." *Id.*, at 504.

Decl., ¶ 5. Hasbro also admits that the product is therapeutic. See Hasbro Br. at 5, and proposed Hasbro identification of goods (“therapeutic activity kit”)(emphasis added).

(b) Creative Action’s product is a game.

The MEMORY MAGIC product is a game because it is a diversion or amusement – even though it is not a competitive game with a winner and a loser. See Webster’s Ninth New Collegiate Dictionary at 504 and Sterns Decl. at ¶ 12. Hasbro points to Dr. Sterns’ deposition testimony that “We no longer call it a game,” and that the product is not played in a competitive manner to support its argument that the MEMORY MAGIC product is not a game. Hasbro Br. at 4-6. Creative Action itself has variously referred to the product as an “activity” (Porter Decl., Ex. 2, p. 455-66), an “activity set” (*Id.*, at p. 546), and a “game” (*Id.*, at p. 459, 465, and 471-74).

Here is a screen capture from Creative Action’s package insert that shows the contents of the package:

Please Check Package Items.

☐ • 10 Game Boards

☐ • 40 Game Cards
Packed 4 per Game Board
(16 Games per Game Board)

☐ • 1 box 240 Double-sided Calling Cards
(15 for each game) with clues
listed on front-answers listed on back

☐ • 1 Instruction Sheet with Leader check list.

NUMBER OF PLAYERS:
With one activity set, up to ten people can play at one time.

The number of players can be increased to 20 or more with the purchase of additional Game Boards/ Game Cards.
(See contact information on back page.)

NUMBER OF ACTIVITY LEADERS:
1 to 2 individuals can facilitate the activity.

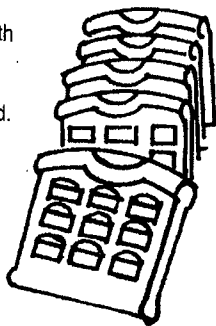
16 Games: Suggested Games for Levels of Functioning					
All Levels		Mid-to-High		Low-to-Mid	
Three of a Kind	Game 1	All in a Day's Work	Game 2	Two of a Kind	Game 6
Wisdom of the Ages	Game 3	What's Cooking?	Game 9	Everyday Items	Game 7
Fairy Tales	Game 4	Show Business	Game 10	Opposites	Game 13
Wit and Wisdom	Game 5	Nature's Creatures	Game 15	The Body	Game 16
Words of the Wise	Game 8				
Sing-Along Songs	Game 11				
Pearls of Wisdom	Game 12				
Nursery Rhymes	Game 14				

MMISOI

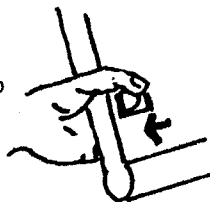
Here is a description of the game that is contained in the package insert:

Preparing the Game Boards

- Each Game Board comes loaded with 4 Game Cards, each printed with 4 games for a total of 16 games. Game numbers are printed at the top center of Game Board as packed. Only the even numbered games are visible.



- To select a game not immediately visible, locate the release lever on the back of the Game Board. Slide the lever toward the outside of the Game Board. Then grasping the top of the Game Cards, pull them up together and out of the top slot of the Game Board.



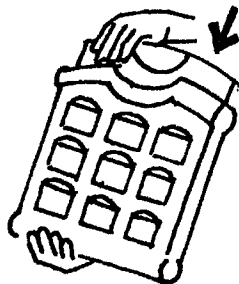
- Place the desired Game Card on top of the other cards. Insert the cards together into the slot located at the top of the Game Board.



- Slide the cards down together until the answers for the desired game are displayed clearly in the Game Board windows.



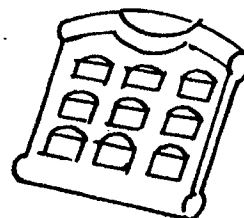
- In order to play 2 consecutive games without staff changing cards, we recommend playing an odd numbered game (1,3,5,etc.) followed by the even numbered game on the same side. Players can easily push down all the cards to bring a new game into view.



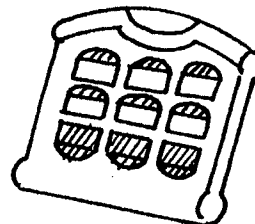
- If you choose to play an even numbered game followed by the odd numbered game on the same side of the card, use the release lever on the back side of the Game Board to pull all the cards up together.



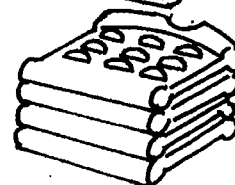
- Make sure all purple shades on each Game Board are raised so that the answers can be clearly seen.



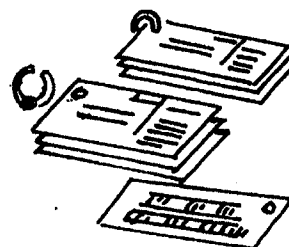
- For lower functioning players, begin the game with 3 or 6 words covered.



- Distribute a Game Board to each player.



- Select the appropriate set of Calling Cards for the game. Open the ring. Remove cards. Place nearby for use.



- To open ring: Grasp opposite sides. Push apart to separate. Then pull to open.



- Follow the script on page 3.



Here is a sample script for playing the game that is included with the package insert:

For best results, please follow this script every time when leading the activity.

1. Orient players to the game by saying:

"We are going to play a (new) board game today."

"We are going to read a clue. I want you to answer the clue out loud. If one of the words on your Game Board completes the clue, slide the purple shade down to cover that word".

- Demonstrate how to pull the shade down on the Game Board to cover a word then ask:

"Do you have any questions?"

2. Hold up a Calling Card to display the clue printed on the front of the card.

- Read the first clue out loud. Make sure all players understand the game procedure.

- For example, you may say:

"Here is the first clue, Neil Armstrong was the first man to walk on the..."

- Be sure to emphasize the fill-in-the-blank nature of the clue by pausing after the last word.

- Encourage players to answer the clue aloud.

3. If no one says the answer aloud, you can read the clue to the players again.

4. If no one still says the answer, you can use the rhyming clue on the back of the Calling Card that has a word that rhymes with the answer.

- So, you next might say:

"What rhymes with Noon?"

5. NOW show players the answer to the clue, which is printed on the back of the Calling Card. Read the answer out loud to them.

6. Remind players to slide the purple shade down over the answer if they have it on their Game Board.

- As needed, you may have to prompt players to locate the answer on their Game Board and slide down the shade to cover it.

7. To increase involvement, invite a player to read the next Calling Card clue aloud.

- To ensure that all players heard the clue:

Repeat the clue in a louder voice.

- If necessary, reposition the Calling Card, making sure that all players can see the clue clearly.

8. If no one says the answer out loud:

Go through steps 3, 4 and 5.

9. After players slide down the appropriate shade to cover the answer:

Encourage discussion using the "Talking Points" listed on the back of the Calling Card.

10. After one or more players have completed a game:

Continue having different players read the remaining Calling Cards and sliding down the shades over the appropriate answers.

11. When a player slides down all the appropriate shades on their Game Board:

Prompt him/her to shout "ALL COVERED!"

12. Game play is complete:

When all players have pulled down all their purple shades.

479

Clearly, Creative Action refers to MEMORY MAGIC prominently as a “game.” But regardless of whether Hasbro, Creative Action, or anyone else calls MEMORY MAGIC a game, an activity, an activity set, a program, an intervention, or even an “activity kit,” and regardless of whether MEMORY MAGIC is played in a competitive or non-competitive manner, the product when used as intended is a diversion or amusement, and therefore is still a game. Sterns Decl., ¶12. As Shakespeare artfully put it: “What’s in a name? That which we call a rose by any other name would smell as sweet.” *Romeo and Juliet* (II, ii, 1-2).

Hasbro does not dispute the accuracy of the remaining portion of Creative Action’s identification of goods, namely, that the product is “in the nature of a trivia game and a bingo game for engaging persons with memory loss consisting of game cards that contain answers to questions and calling cards that contain questions and information related thereto.” Since this portion of the identification has not been challenged as being inaccurate or overbroad, there is no reason to amend it simply to employ Hasbro’s preferred choice of words.

(c) Creative Action’s goods are properly classified in Class 28.

Hasbro suggests that the proposed classification in Class 28 (toys and sporting goods) is incorrect and that reclassification into Class 10 (medical apparatus) is better practice. This is based in part on the argument that Creative Action advertises Medicare and Medicaid reimbursement codes for purchase of the product. Hasbro Br. at 7. Creative Action does not inform its customers that Medicare and Medicaid reimbursement codes can be used for purchase of the MEMORY MAGIC product, only for time therapists spend using the product during speech therapy, occupational therapy and restorative nursing. Sterns Decl., ¶ 13. In any event, Medicare reimbursement codes and Office classification cannot change the fact that the product is a therapeutic game.

Creative Action points to recent action by the Office that confirms that classification in Class 28 is proper. On June 25, 2009, the US Acceptable Identification of Goods and Services Manual for Class 28 was amended to include "Game equipment set sold as a unit comprised primarily of a playing board and playing cards and also including rules of play, dry erase boards and erasers, markers, a timer and T-shirts." Earlier, on December 18, 2008, the Manual for Class 28 was amended to include "Game equipment sold as a unit for playing mind-body emotional and psychological games for adult couples and individuals." Creative Action's MEMORY MAGIC game is a "game equipment set sold as a unit" that includes components similar or identical to playing boards, playing cards, and rules of play and that can be played by adult couples and individuals, and therefore the game is properly classified in Class 28.

5. HASBRO HAS FAILED TO SHOW THAT ITS PROPOSED AMENDMENT TO THE IDENTIFICATION OF GOODS WILL AVOID A FINDING OF LIKELIHOOD OF CONFUSION.

In order to amend a pleading pursuant to Section 18 of the Lanham Act, 15 U.S.C. § 1068, a party must show that "in a case involving likelihood of confusion, [the party] pleads and proves that (i) the entry of a proposed restriction to the goods or services in its opponent's application or registration will avoid a finding of likelihood of confusion and (ii) the opponent is not using its mark on those goods or services that will be effectively excluded from the application or registration if the proposed restriction is entered." *Eurostar, Inc. v. 'Euro-Star' Reitmoden GMBH & Co. KG*, 34 U.S.P.Q.2d 1266 (TTAB 1994). Hasbro cannot meet these requirements because (1) Hasbro has admitted that likelihood of confusion does not exist between the parties' products, (2) Hasbro has not shown that Creative Action's current identification of goods will result in a likelihood of confusion, and (3) no goods or services will be effectively excluded from the application if Hasbro's proposed restriction is entered (Hasbro's proposed

identification of goods does not exclude goods, it only describes them using different words).

Pursuant to *Eurostar*, Hasbro must show that the entry of the proposed restriction to the goods or services in Creative Action's application will avoid a finding of likelihood of confusion. While Hasbro contends that the current identification is overbroad and inaccurate, it does not allege that its proposed identification will avoid a finding of likelihood of confusion. In order to show that likelihood of confusion will be avoided by an amendment, logically it first must be shown that likelihood of confusion will occur in the absence of an amendment. Hasbro has failed to show that Creative Action's current identification will result in likelihood of confusion.

Hasbro's failure is not surprising since Hasbro's game is not a "therapeutic" game, nor is it a game "in the nature of a trivia game and a bingo game for engaging persons with memory loss consisting of game cards that contain answers to questions and calling cards that contain questions and information related thereto." Hasbro has defined its goods to be "card matching games" and "equipment comprising cards with many matching pairs of designs for playing a matching card game." See Ex. 1 and Ex. 2 to proposed amended notice (Ex. A to Landsman Decl.) In addition, as pointed out by Hasbro in its brief, the respective products are sold to different customers through different channels of trade for different prices and for different purposes. Hasbro Br. at p. 6 and 7. In view of these differences, Hasbro has not and cannot show that the present identification would result in a likelihood of confusion or that the proposed amendment would avoid a finding of likelihood of confusion. Hasbro's motion is without foundation and should be denied.

6. HASBRO'S ALLEGATION THAT CREATIVE ACTION DID NOT HAVE A BONA FIDE INTENT TO USE THE MARK MEMORY MAGIC ON THE GOODS IDENTIFIED IN THE APPLICATION IS INCORRECT

Hasbro's allegation pursuant to 15 U.S.C. § 1051(b) that Creative Action did not have a bona fide intent to use the mark MEMORY MAGIC on the goods identified in the application is premised on the alleged misidentification of Creative Action's goods. Since the goods are correctly identified, there is no basis for Hasbro to allege that Creative Action lacked a bona fide intent to use the mark MEMORY MAGIC on the goods in question.

7. ALTHOUGH LEAVE TO AMEND IS LIBERALLY GRANTED WHERE JUSTICE REQUIRES, IT SHOULD NOT BE GRANTED WITHOUT A PROPER FOUNDATION

Hasbro has cited the Civil Rules and case law to support the position that leave to amend a pleading that does not seek to add to the goods or services should be freely given. Nevertheless, leave to amend should not be granted without a proper foundation.

Here, Hasbro has failed to establish that any amendment of Creative Action's identification of goods is necessary or proper. Since no foundation has been established for the proposed amendment, it would be wrong for the Board to grant Hasbro leave to amend its notice of opposition.

8. THE OPPOSITION SHOULD NOT BE SUSPENDED PENDING RESOLUTION OF THE PRESENT MOTION

The Board generally will defer determination of a timely filed⁴ unconsented motion to amend until final decision or until the case is decided upon summary judgment. Section 514.03, TBAP; *Space Base, Inc. v. Stadis Corp.*, 17 U.S.P.Q.2d 1216 (TTAB 1990)(motion to amend identification of goods deferred). In view of this practice, Hasbro's request to suspend the opposition until determination of its motion will produce a catch-22: the motion will not be decided until final decision or summary judgment, but

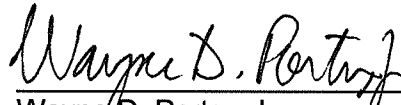
the case cannot reach final decision or summary judgment because it has been suspended.

There is no reason for such a logjam to be created. Whether the Board rules on the present motion in the near future or defers determination for a later date, a suspension of the opposition is not necessary and Hasbro's request for same should be denied.

CONCLUSION

Hasbro's motion to amend the notice of opposition and to suspend the proceedings should be denied

Respectfully submitted,



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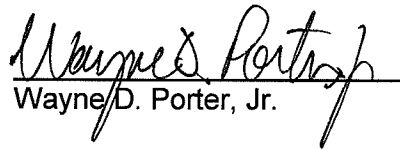
January 25, 2010

⁴ Creative Action disputes that Hasbro's motion has been timely filed for the reasons set forth in Section 2, *supra*.

CERTIFICATE OF SERVICE

I hereby certify that on January 25, 2010 a true and correct copy of the foregoing
CREATIVE ACTION LLC'S RESPONSE TO OPPOSER'S MOTION TO AMEND
OPPOSER'S NOTICE OF OPPOSITION AND TO SUSPEND THE PROCEEDINGS was
served on counsel for Hasbro, Inc. electronically and by mailing a copy via first class
mail, postage pre-paid, to:

Kim J. Landsman, Esq.
Patterson Belknap Webb & Tyler LLP
1133 Avenue of the Americas
New York, NY 10036-6710


Wayne D. Porter, Jr.

**RESPONSE TO MOTION TO AMEND
EXHIBIT A**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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In the matter of Application Serial No. 78/359,895

Filed: January 30, 2004

For the Mark: MEMORY MAGIC in International Class 28

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DECLARATION OF WAYNE D. PORTER, JR.

WAYNE D. PORTER, JR., under penalty of perjury, declares as follows:

1. I am a member of the firm The Law Offices of Wayne D. Porter, Jr., attorney for Creative Action LLC ("Creative Action"), and am a member of the bar of the State of Ohio.

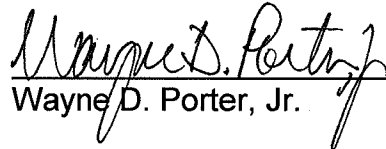
2. I submit this declaration based on personal knowledge in response to Opposer's Motion to Amend Opposer's Notice of Opposition and to Suspend the Proceedings.

3. Attached hereto as Exhibit 1 is a true and correct copy of Creative Action's Response to Opposer's First Set of Interrogatories to Applicant that was served on Hasbro, Inc. on April 13, 2006.

4. Attached hereto as Exhibit 2 is a true and correct copy of documents that were served on Hasbro, Inc. on April 28, 2006.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 25, 2010 in Cleveland, Ohio.


Wayne D. Porter, Jr.

**WAYNE PORTER DECLARATION
EXHIBIT 1**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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**CREATIVE ACTION LLC'S RESPONSE TO OPPOSER'S
FIRST SET OF INTERROGATORIES TO APPLICANT**

Creative Action LLC ("Applicant") hereby responds to Hasbro, Inc.'s ("Opposer's") first set of interrogatories to Applicant.

RESPONSE TO INTERROGATORIES

1. Identify separately for each category listed below the persons, including without limitation Applicant, Applicant's agents, businesses, partnerships, employees and those of Applicant's advisors, consultants, advertising agencies, public relations firms and marketing consultants, most knowledgeable about:

- a. the date and circumstances of Applicant's intended or actual first use of the MEMORY MAGIC mark, both generally and in the commerce of the United States;

ANSWER:

Creative Action staff: Ronni Sterns

Advisory Board members: Terry Berman, Cliff Isroff, Marty Oppenheimer, Ira Kaplan, Gary Salhany

- b. the decision to adopt, use register, or not register the MEMORY MAGIC mark in the United States;

ANSWER:

Ronni Sterns, Tony Sterns, Harvey Sterns, Jim Kilcoyne.

- c. Applicants's actual or intended use of the MEMORY MAGIC mark, including but not limited to, the nature of goods or services that the MEMORY MAGIC mark is used in connection with or intended to be used in connection with by Applicant;

ANSWER:

Creative Action staff: Ronni Sterns, Tony Sterns, Harvey Sterns, Jim Kilcoyne, Charles Nelson.

Advisory Board members: Cliff Isroff, Mary Oppenheimer, Gary Salhany.

- d. any actual confusion or likelihood of confusion between Applicant's MEMORY MAGIC mark and Opposer's MEMORY® mark;

ANSWER:

No such person exists.

- e. the channels of trade for Applicant's actual or intended services bearing the MEMORY MAGIC mark;

ANSWER:

Creative Action staff; Ronni Sterns, Tony Sterns, Harvey Sterns

Consultant; Monica Mason

- f. the demographics of clients or consumers for actual or intended services in the United States bearing the MEMORY MAGIC mark;

ANSWER:

Creative Action staff; Ronni Sterns, Tony Sterns, Harvey Sterns, Jim Kilcoyne,

Consultant; Monica Mason

National Institute on Aging, HCR Manor Care, and Beverly Enterprises.

- g. the actual or anticipated revenues, sales, client or consumer relations, public relations, marketing, advertising and promotion in connection with Applicant's actual or intended services bearing the MEMORY MAGIC mark;

ANSWER:

Creative Action staff; Ronni Sterns, Tony Sterns, Harvey Sterns, Jim Kilcoyne.

Consultant; Monica Mason

- h. and the printed books, magazines, journals, newsletters, computer software, business papers, brochures, seminar, workshop and conference-related materials, business, marketing or media plans and any and all other materials used in connection with Applicant's actual or intended services bearing, using, adopting or affiliated with the MEMORY MAGIC mark.

ANSWER:

Creative Action staff; Ronni Sterns, Tony Sterns, Harvey Sterns, Jim Kilcoyne.

Advisory Board member: Gary Salhany

Consultant; Monica Mason

2. Identify all actual or intended goods or services to be provided, marketed or sold in the United States that the MEMORY MAGIC mark has been used or is intended to be used in connection therewith, and for each such good or service identified:

ANSWER:

MEMORY MAGIC activity/program for groups and for people with dementia, head trauma or stroke living in long term care facilities or attending adult day care centers and older adults with these cognitive impairments living at home and staff training programs related to the MEMORY MAGIC activity.

- a. identify the date and circumstances of actual or intended first use and, if different, the date and circumstance of first use in commerce in the United States;

ANSWER:

First used on or about August 5, 2004. Ronni Sterns had worked with HCR Manor Care to carry out an NIH NIA research project. The director of dementia services asked Ronni Sterns to introduce the MEMORY MAGIC activity at a training session for northeast Ohio HCR Manor Care activity professionals on Montessori-based activities for people with dementia. Those activity professionals who wanted an in-service for the

activity gave R. Sterns their names. Bainbridge Manor Care was the first in-service and the first long-term facility that purchased the MEMORY MAGIC activity

- b. state Applicant's total annual revenues for such good or service by gross revenue, net revenue and revenue for each year the good or service was provided, or projections of total annual revenue for each year the good or service is intended to be provided;

ANSWER:

Information needed to answer this interrogatory is not available yet.

- c. identify the geographic area(s) in which the good or service has been or is intended to be provided;

ANSWER:

The entire United States.

- d. identify the channels of trade through which the good or service has been or will be provided and identify any corporations, businesses, partnerships, persons or third-parties that are affiliated with or facilitate the good or service provided by Applicant;

ANSWER:

Trade show exhibits, direct marketing, and distributors of products to the health and long term care industries.

- e. identify the actual or intended class of clients or consumers to which the good or service has been or is intended to be provided;

ANSWER:

Long-term care facilities, adult day care centers, home health care agencies, psychiatric hospitals and units, and care givers of older adults with dementia, head trauma or stroke who live at home.

- f. identify all media by either name of network or television station, radio station magazine, publication, newsletter, website(s) or newspaper in which advertising or marketing has occurred for the good or service;

ANSWER:

Akron Beacon Journal and Creative Action LLC website.

- g. state separately for each calender year the actual or intended expenditures or value of advertising, promotion, marketing, client or consumer relations, and public relations related to the good or service;

ANSWER:

Actual or intended expenditures exist for 2005 and 2006 only and have not been identified yet.

- h. identify any actual or intended licensing arrangement concerning the good or service between the Applicant and any person;

ANSWER:

None.

- I. identify any mention by the media of the good or service;

ANSWER:

Akron Beacon Journal and Creative Forecasting.

- j. and identify all partnerships, persons, businesses, and their respective owners, agents and employees that (1) use, adopt, are affiliated with, or license the mark MEMORY MAGIC, or (2) are affiliated with any other partnerships, persons, or businesses using, adopting or licensing the mark MEMORY MAGIC.

ANSWER:

None.

3. Identify the persons principally involved in the conception, selection, development, use and adoption of the MEMORY MAGIC mark used in connection with Applicant's actual or intended good(s) or service(s) in every country throughout the world and, with respect to each person so identified, identify what role each played in conceiving, selecting, developing, using and adopting the mark.

ANSWER:

Ronni Sterns conceived of the mark. Jim Kilcoyne, Tony Sterns and Harvey Sterns helped with the development of an initial flyer and Monica Mason changed the appearance of the mark to that in the brochure.

4. State whether Applicant received an opinion concerning the availability for use, risk of liability arising out of use or intended use, and registrability of the MEMORY MAGIC mark in the United States and, if so, identify: (a) the date on which the opinion was rendered; (b) the person rendering the opinion; (c) the person receiving such opinion; and (d) all documents reflecting or referring to such opinion.

ANSWER:

Yes. An opinion was rendered by attorney Carl Rankin in a letter dated April 28, 1999 to Ronni Sterns.

5. State: (a) the date when Applicant first acquired knowledge of Opposer's MEMORY® mark; (b) how such knowledge was acquired; and ©) the identity of the person who first acquired such knowledge.

ANSWER:

Opposer's alleged MEMORY mark was contained in a trademark search conducted in 1999. However, Applicant was not actually aware of the existence of Opposer's alleged MEMORY mark until the present opposition proceeding was instituted.

6. Identify each person who has inquired about, commented upon, or contacted Applicant regarding the source or sponsorship of any service bearing the MEMORY MAGIC mark or Opposer's MEMORY® mark.

ANSWER:

None.

7. Identify each person who has conducted a survey, market research study, poll, or investigation concerning confusion or potential confusion or likelihood of confusion between Applicant's good(s) or service(s) bearing the MEMORY MAGIC mark and Opposer's products bearing Opposer's MEMORY® mark.

ANSWER:

None.

8. Identify, by registration number or application serial number, each foreign or United States federal or state registration or application for trademark registration filed by or issued in the name of Applicant, or assigned or licensed to Applicant, for the MEMORY MAGIC mark.

ANSWER:

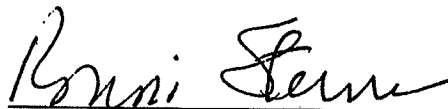
U.S. Serial No. 75/818,625, filed October 8, 1999.

U.S. Serial No. 78/359,895, filed January 20, 2004.

Canadian Serial No. 1,224,229, filed July 20, 2004.

VERIFICATION

I declare under penalty of perjury that the answers to the foregoing interrogatories are true and correct. Executed on April 13, 2006.

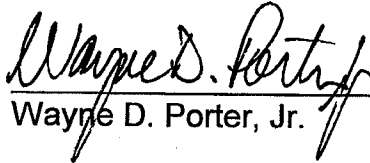
A handwritten signature in cursive script, appearing to read "Ronni Sterns", is written over a horizontal line.

Ronni Sterns, Member
Creative Action LLC

CERTIFICATE OF SERVICE

I hereby certify that on April 13, 2006 a true and correct copy of the foregoing
CREATIVE ACTION LLC'S RESPONSE TO OPPOSER'S FIRST SET OF
INTERROGATORIES TO APPLICANT was served on counsel for Hasbro, Inc.
electronically and by mailing a copy via first class mail, postage pre-paid, to:

Kim J. Landsman, Esq.
Patterson Belknap Webb & Tyler LLP
1133 Avenue of the Americas
New York, NY 10036-6710

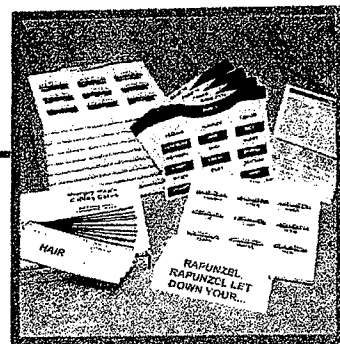

Wayne D. Porter, Jr.

**WAYNE PORTER DECLARATION
EXHIBIT 2**

MemoryTM
Magic
ACTIVITY

Cognitively Stimulating

Cognitively impaired residents use remaining abilities including reading.



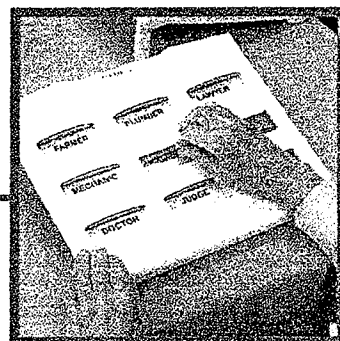
Emotionally Stimulating

Residents are encouraged to share pleasurable memories.



Physically Stimulating

Residents use fine and gross motor skills when participating.



Socially Stimulating

Various themes create opportunities for social interaction and discovery.



Culturally Stimulating

Facilitated discussion questions generate reflection on cultural customs, phrases, and traditions.



Successfully exercising remaining abilities to improve quality of life.

Cognitive Intervention: Uses familiar contexts to prompt "doing" which will increase a sense of accomplishment

Features

Habits, abilities, and information learned when young are used.

Tasks are broken down into simple steps and performed repetitively.

Information needed to do an activity is built into the materials and external cues are used to give immediate feedback.

Recognition is substituted for recall.



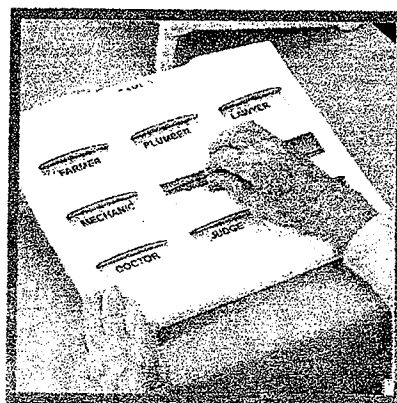
Benefits

Using lifelong habits and skills promote and extend the use of remaining abilities.

Doing tasks repetitively stimulates memory, making it possible for functional habits to be prolonged.

Familiar materials increase participation and opportunities for reminiscence.

Recognition creates more opportunities for participation.





Beyond Bingo...

- *Bingo is not conducive to range of cognitive abilities.*
Bingo creates confusion and frustration because it asks residents to use abilities they no longer have.
- *Memory Magic™ Activity engages multiple cognitive abilities.*
Memory Magic™ Activity was designed to be enjoyed by residents with all ranges of cognitive abilities simultaneously as well as utilize the abilities older adults still have.
- *Bingo limits socializing and conversation.*
Sharing personal stories, interests, or beliefs are not encouraged during a competitive Bingo game.
- *Memory Magic™ Activity encourages conversation between residents.*
Discussion questions included in each activity encourage residents to discuss their interest, hobbies, and life experiences.
- *Bingo creates negative feelings.*
The competition associated with Bingo creates anxiety and negative feelings.
- *Memory Magic™ Activity creates positive emotions.*
Memory Magic™ Activity is specifically designed to create a point of focus to enable concentration and remove negative emotions associated with Bingo.
- *Bingo has too many small pieces.*
Tiny pieces are difficult to manipulate. Tiny pieces are often lost or broken.
- *Memory Magic™ Activity has only large 3 parts.*
All parts of Memory Magic™ Activity are easy to handle and neatly contained to ensure no pieces are misplaced. The cards are only handled by the facilitator.
- *Bingo requires multiple purchases.*
Materials needed to purchase the average Bingo set typically require purchasing the following pieces separately: Bingo Cage • Bingo Balls • Bingo Playing Cards • Bingo Chips.
- *Memory Magic™ Activity requires a one-time only purchase.*
A one-time purchase includes enough materials for 10 residents to participate in 16 diverse activities that have limitless possibilities.

Remember

You main objective is to create the opportunity for engagement and positive social interaction.

■ *Be Patient*

Present the first couple of clues slowly to orient your participants to the playing process. Allow you participants enough time to attempt to do each step of the activity by themselves. For example, do not automatically pull down the shades for them.

■ *Be Supportive*

The most social interaction will occur when you provide the participants with the most opportunities to participate. When asking question labeled "Talking Points," try asking open ended questions, multiple choice questions, and yes or no questions.

■ *Be Attentive*

Throughout the activity search for your residents areas of interest and encourage further conversation of those interests

■ *Be Encouraging*

Make sure to continually use positive reinforcements throughout the activity. At the end, reinforce positive emotions and ask them if they'd like to play the activity again sometime.

■ *Be Flexible*

The Memory Magic Activity is purposely versatile. If your participants are more interested in one aspect of the game (*talking about the clues or providing their own information or memories*) be flexible and allow the game to take the direction that most appeals to them.



*Clients Successfully Using
Memory Magic™ Activity
As Part Of Their Care Plan*

Alabama

St Martins in the Pines
South Highland Adult Daycare Center

Arkansas

Beverly Health Center, Fort Smith

California

Bethesda Home
Institute on Aging ADHC
Rhoda Goldman Plaza
Vista del Sol Care Center

Colorado

Mountain Vista Health Center

Florida

Classic Residence by Hyatt in Hollywood

Illinois

The Scottish Home

Indiana

Adult Day Care of Richmond

Kansas

ManorCare - Overland Park

Michigan

Nexcare Health Systems
Village of Redford

Nebraska

Rose Blumkin Jewish Home

Nevada

Lefa L Scran Nursing Home

New Jersey

Applewood Estates

New Mexico

Santa Fe Care Center

New York

Presbyterian Homes and Services, Inc

North Carolina

Brian Center Cabarrus

Ohio

Adams Lane Care Center
Akron Outpatient Clinic
Alliance Community Hospital Community
Care Center
Andover Village Retirement Community
Arden Courts of Bainbridge
Arden Courts of Bath
Arden Courts of Parma
Bayley Place
Breckenridge Village
Burlington House
Canterbury Villa of Alliance
Carr Center
Columbus Colony Elder Care
Concordia Care
Copley Health Center
Cuyahoga Falls County Place
Eastgate of Cincinnati Health Care Center
Elder Center
Eliza Bryant Center
Emerald Ridge Health Care Center
Falls Village Retirement Community
Gloria Jean Litteral
Good Shepherd Home
Grand Court Dayton
Harborside Healthcare - Beachwood
Harborside Healthcare - Westwood
Heartland of Bellefontaine
Isabelle Ridgeway Care Center
Logan Acres Nursing
Lutheran Home
ManorCare Health Services - Akron
ManorCare Health Services - Belden
Village
ManorCare Health Services - Lakeshore

McGregor Home

Menorah Park Center for Senior Living
Mercy McAuley
Middlebury Manor
Mother Margaret Hall
Northfield Village Retirement Community
Paradigm Systems
Park Vista Retirement Community
Parma Community General Hospital
Riverside
Pleasantview Care Center
Rockynol Retirement Community
Sumner on Ridgewood
St. Luke Lutheran Community
Sunrise of Bath
The Bradley Center of St. Francis
Three Rivers Nursing and Rehab
Twin Pines Retreat Care Center
Western Hills Care Center
Wood Glen

Oklahoma

ManorCare Health Services - Midwest

Pennsylvania

The Brethren Home
Beverly Healthcare Clarion
Beverly Healthcare Oil City
Beverly Healthcare Shippensburg

Virginia

Hearth & Home
Life Care Center of New Market
Roman Eagle Memorial Home, Inc

Wisconsin

Leopoldine Begmanis
ManorCare - Fond Du Lac
Morrow Memorial Home
Spring Valley Health Care Center



Costs & Considerations

Cost Analysis (Based on 10 Participants)

- Initial Cost for Complete Set \$399.00
- For one person to play all 16 activities \$39.90
- For one person to play 1 activity once a week 77¢
- For one person to play 1 activity twice a week 38¢

Staff Considerations

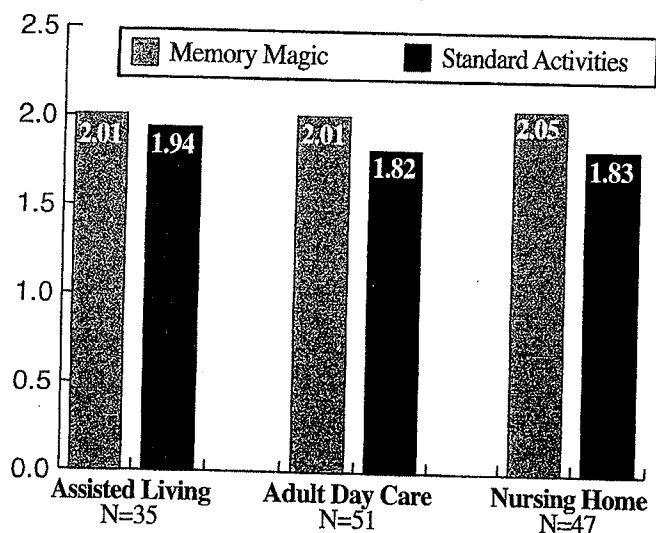
- Self Contained
- Easy Set Up
- Easy to Distribute and Retrieve
- Only a One Time Purchase Required

National Institute on Aging Study

A Study conducted in 2004-2005 funded by the National Institute on Aging involved three types of facilities: **Assisted Livings, Adult Day Care Centers & Nursing Homes**. The participating facilities were located in Alabama, Maryland, and Ohio. The participants were observed on at least 3 occasions playing Memory MagicTM Activity and at least 3 occasions participating in traditional activities including bingo, exercise, musical hangman, reminiscent cards and cooking. The participants were observed for 5 minutes and rated on 11 aspects of engagement and behavior. Observations were made with the Menorah Park Engagement Scale.

ACTIVE ENGAGEMENT

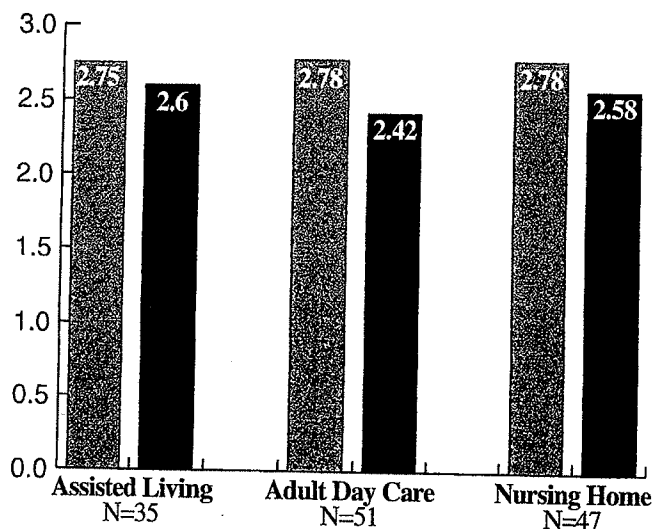
1 = Not at engaged
3 = Engaged more than 1/2 the time



- Participants significantly more actively engaged compared to standard activities.
- Active engagement is participating vocally or physically such as moving the shades

PASSIVE ENGAGEMENT

1 = Not at engaged
3 = Engaged more than 1/2 the time



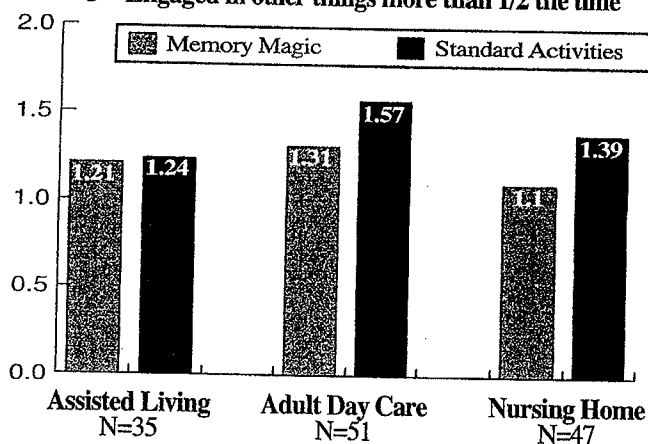
- Participants significantly more Passively engaged.
- Passive engagement is paying attention, actively listening and following the conversation.

Non-Engagement

ENGAGED IN OTHER THINGS

1 = Not engaged in other things

3 = Engaged in other things more than 1/2 the time

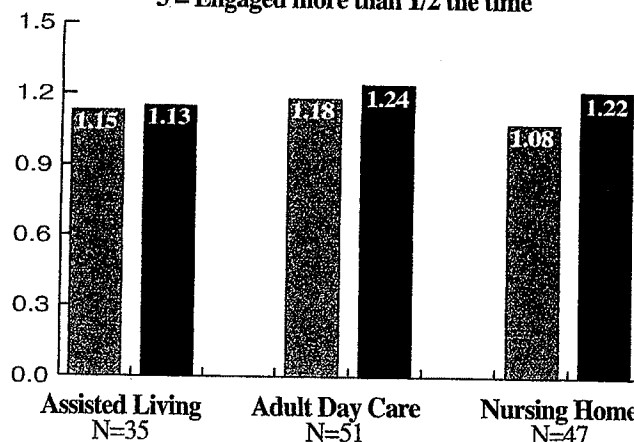


- Participants significantly less engaged in other things compared to standard activities.
- Engagement in other things is having their own conversation or paying attention to things other than the group activity.

PASSIVE ENGAGEMENT

1 = Not at engaged

3 = Engaged more than 1/2 the time



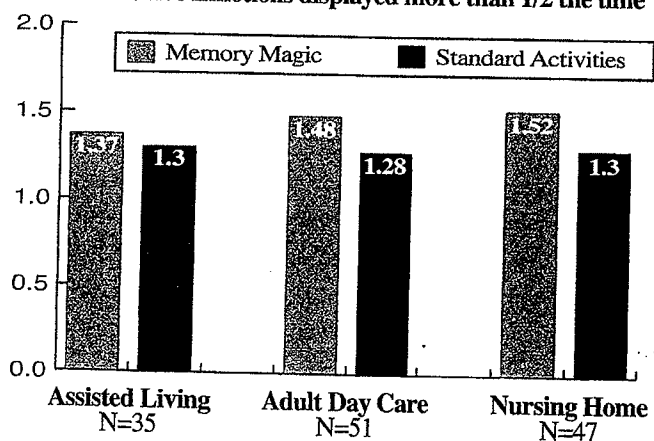
- Participants significantly less non-engaged.
- Non-engagement is sleeping during the activity or leaving the activity during observation

Emotion & Behavior

POSITIVE EMOTIONS

1 = No negative emotion displayed

3 = Positive Emotions displayed more than 1/2 the time

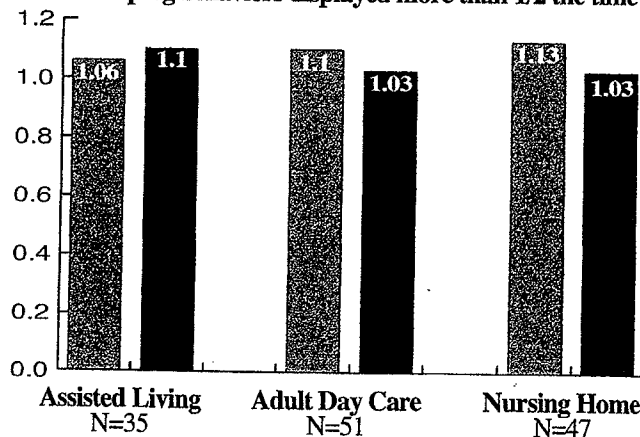


- Participants significantly less engaged in other things compared to standard activities.
- Engagement in other things is having their own conversation or paying attention to things other than the group activity.

HELPING BEHAVIOR

1 = Not helping behaviors displayed

3 = Helping behaviors displayed more than 1/2 the time



- Participants demonstrated significantly more helping behaviors to standard activities
- Helping Behaviors included helping pull locate words or pulling down shades



Conferences & Conventions

ACTIVITY

AAHSA

American Association of Homes
& Services for Aging
Conference November 2005
San Antonio, TX

ICADI

International Conference
Aging Disabilities
Conference February 2006
St. Petersburg, FL

RAP

Resident Activities
Professionals
Conference October 2005
Columbus, OH

NAAP

National Association
Activity Professionals
Conference April 2006
Reno, NV

GSA

Gerontological Society
of America
Conference 2003
San Diego, CA

ASA

American Society
on Aging
Conference 2005
Philadelphia, PA

OAGE

Ohio Aging and
Gerontological Education
Conference 2005
Aurora, OH

NAAP

National Association
Activity Professionals
Conference 2005
Alexandria, VA

ISGT

International Society
Gerotechnology
Conference 2005
Nagoya, Japan

APA

American Psychological
Association
Conference 2003
Toronto, Canada

Alzheimer's Association

Alzheimer's Association
Conference 2005
Chicago, IL

AOPHA

Ohio Association for
Philanthropic Homes for the Aged
Conference September 2005
Columbus, OH



ENDORSEMENTS FROM FACILITIES USING THE ACTIVITY

"...our residents really like the Memory Magic™ Activity. We really have some interesting and fun discussions. I am really glad that we purchased. It is a really great investment." **Activity Director, Skilled Nursing, Fond du Lac ManorCare, Fond du Lac, WI**

"The residents here are enjoying their time playing the Memory Magic™ Activity. It is stimulating many memories and keeps their attention. It gives resident's something to look forward to. I would recommend this wonderful activity to others..."

Activity Director, Skilled Nursing, Falls Village, Cuyahoga Falls, OH

"The residents who play with us very much enjoy the Memory Magic™ Activity and are eager to play again. Residents in other areas are excited about starting something new!"

Director of Activities, Assisted Living, Rockynol Retirement Community, Akron, OH

"Residents recalled playing the game... Residents greet one another as we bring them in (all in wheelchairs) to where the Memory Magic™ Activity takes place. It's as if they know this is going to be social time that elicits positive feelings. We begin and end each session with greetings and goodbyes that make our time together special."

Ph.D. Professor and Chair, Dept of Psychology, University of Wisconsin

"Participants represent a wide range in cognitive ability. They enjoy the camaraderie, the ability to participate and especially the ability to be involved in an activity that is non-threatening and fun on so many levels. It is much better than bingo. It makes them think. We are able to involve participants who are not willing to take a risk of losing as well as those who cannot speak and those who have lost the ability to play other games."

Activity Director, Adult Day Care, Concordia Care, Cleveland, OH

"Great game for playing with residents. They really enjoy it and look forward to it because it gives them a time to get to know their neighbors and friends. They laugh... It gets residents talking. It is not an activity that takes 20 minutes and you are done. This is a good 45 minute activity. You know they are going to enjoy it."

Recreational Services Director, Beverly Healthcare Clarion, Clarion, PA

"The Memory Magic™ Activity brought back memories. They did reminiscing, a skill we need to keep with them as long as we can... They were learning from it."

Administrator, Assisted Living, Beverly Healthcare Clarion, Clarion, PA

"The Memory Magic™ Activity gives residents an opportunity to really participate. Even residents who don't normally participate do so when they play Memory Magic™. Reminiscing brings back a lot of good memories. They enjoy reminiscing and talking."

Social Services Director, Skilled Nursing, Beverly Healthcare Clarion, Clarion, PA

"Everyone enjoys the Memory Magic Activity. I can see the wheels turning. Even less-oriented people participate."

MDS RN, Skilled Nursing, Beverly Healthcare Clarion, Clarion, PA

"The Memory Magic™ Activity incites conversation. That was the biggest bonus. It sparks a memory. Residents share and feel more valued. Now there is more conversation with other activities. The residents have learned to elaborate on the answer and branch off to other questions. My staff is surprised at residents' ability to answer questions. Staff had assumed that residents would not be capable of answering questions."

Alzheimer's Care Director, Dementia Unit, Beverly Healthcare Shipperville, Shipperville, PA

"The Memory Magic™ Activity is very versatile. You can do it different ways each time, depending on the questions you ask. You can make up your own questions. You can get a lot of different responses from residents who ordinarily don't respond or don't participate or fall asleep. With Memory Magic™, they don't do that. They are more involved."

Activity Director, Skilled Nursing, Beverly Healthcare Shipperville, Shipperville, PA

"Residents all join in singing. There is a lot of laughing and joking. Residents are happy when playing Memory Magic™."

Social Services Director, Skilled Nursing, Beverly Healthcare Shipperville, Shipperville, PA

"I like the Memory Magic™ Game Board because it is something my residents can hold and manipulate. The Memory Magic™ Activity keeps my cognitively-impaired residents cognitive a little longer. With Memory Magic™, you are able to have everything you need in a program at hand. It provides variety. It's creative and I can use it at each cognitive level."

Activity Coordinator, Skilled Nursing, Beverly Healthcare Oil City, Oil City, PA

"Most of our residents are clickish. The Memory Magic™ Activity starts conversation spontaneously when we play it with a variety of residents, including the higher and lower functioning."

Social Services Director, Skilled Nursing, Beverly Healthcare Oil City, Oil City, PA



680 North Portage Path • Akron, Ohio 44303

330-867-9978

www.MemoryMagic.com

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INSTRUCTIONS

Memory Magic™ Activity

Object of the Activity:

The Memory Magic™ Activity is an innovative, therapeutic program that combines trivia with reminiscence. This intervention was developed to provide an interesting and entertaining new activity for persons with memory problems.

Because the activity is based on Montessori educational principles, it compensates for differences in memory ability. For example, the game uses printed clues so players can enjoy a high probability of success.

In addition to providing cognitive stimulation, The Memory Magic™ Activity also provides opportunities for players to work on motor skills when asked to open and close shades and switch from one game to the next.

The object of this activity is to ENGAGE the players – to help them share memories with each other and to socialize. The primary idea is to create a “failure-free” experience for the players – NOT to “win,” or play the activity “correctly.”

The Memory Magic™ Activity can also be modified to let persons with different levels of memory problems still succeed and enjoy taking part. The activity can be used with an individual or groups of twenty players or more.

About Montessori Based Activities

The Memory Magic™ Activity was created using the Montessori principles of teaching which include the use of everyday materials, structure, demonstration, and self-correction, meaning that the activity gives clues to successful engagement.

Dr. Maria Montessori was the creator of these principles that became known as the “Montessori Method.” Dating back to the early 1900s, Dr. Montessori was determined to help “unteachable” children who lived in the tenements of Rome.

Dr. Montessori believed that these children could truly learn, but just needed a new method of teaching. She developed meaningful activities that built on the abilities that the children had, promoting success, rather than setting these children up for failure.

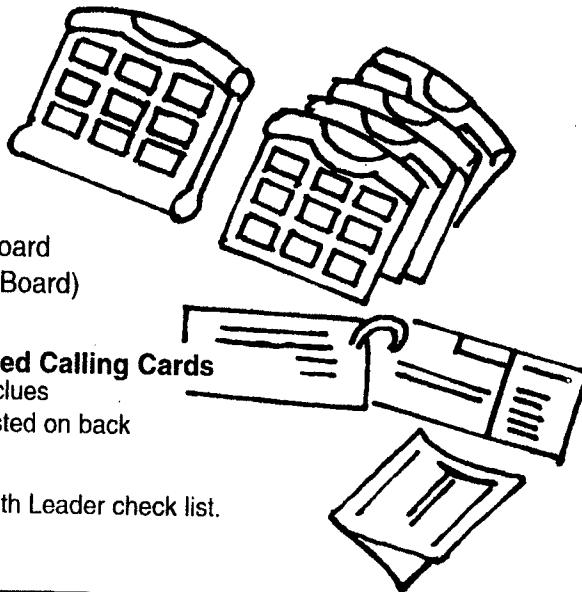
Montessori’s theoretical framework of circumventing deficits can also be applied to older adults with dementia who can still have meaningful experiences.

Montessori-based activities incorporate skills that facilitate Activities of Daily Living, thereby promoting independence. They also focus on breaking tasks down into their simpler, component parts, and building on the remaining strengths that individuals still have.

Please
Check
Package
Items.

SET CONTENTS:

- ☐ • 10 Game Boards
- ☐ • 40 Game Cards
Packed 4 per Game Board
(16 Games per Game Board)
- ☐ • 1 box 240 Double-sided Calling Cards
(15 for each game) with clues
listed on front-answers listed on back
- ☐ • 1 Instruction Sheet with Leader check list.



NUMBER OF PLAYERS:

With one activity set, up to ten people can play at one time.

The number of players can be increased to 20 or more with the purchase of additional Game Boards/ Game Cards.

(See contact information on back page.)

NUMBER OF ACTIVITY LEADERS:

1 to 2 individuals can facilitate the activity.

16 Games: Suggested Games for Levels of Functioning

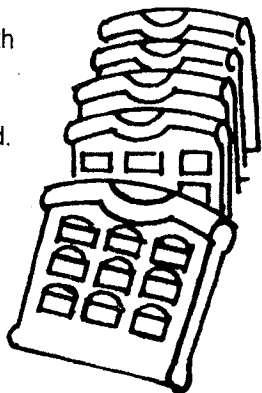
All Levels		Mid-to-High		Low-to-Mid	
Three of a Kind	Game 1	All in a Day's Work	Game 2	Two of a Kind	Game 6
Wisdom of the Ages	Game 3	What's Cooking?	Game 9	Everyday Items	Game 7
Fairy Tales	Game 4	Show Business	Game 10	Opposites	Game 13
Wit and Wisdom	Game 5	Nature's Creatures	Game 15	The Body	Game 16
Words of the Wise	Game 8				
Sing-Along Songs	Game 11				
Pearls of Wisdom	Game 12				
Nursery Rhymes	Game 14				

MMISOI

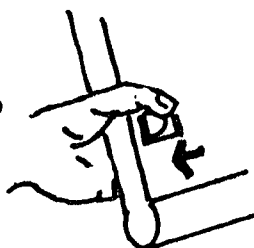
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Preparing the Game Boards

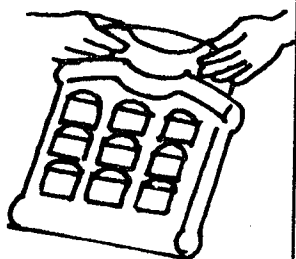
- Each Game Board comes loaded with 4 Game Cards, each printed with 4 games for a total of 16 games. Game numbers are printed at the top center of Game Board as packed. Only the even numbered games are visible.



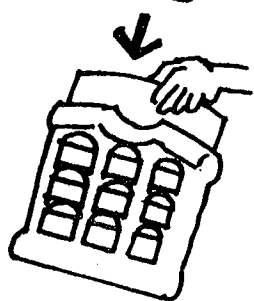
- To select a game not immediately visible, locate the release lever on the back of the Game Board. Slide the lever toward the outside of the Game Board. Then grasping the top of the Game Cards, pull them up together and out of the top slot of the Game Board.



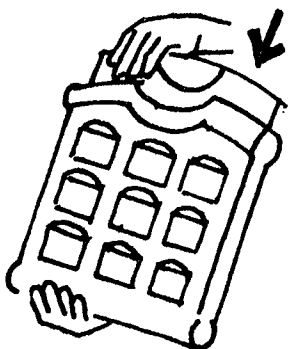
- Place the desired Game Card on top of the other cards. Insert the cards together into the slot located at the top of the Game Board.



- Slide the cards down together until the answers for the desired game are displayed clearly in the Game Board windows.



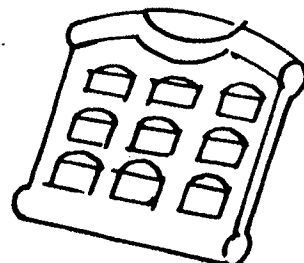
- In order to play 2 consecutive games without staff changing cards, we recommend playing an odd numbered game (1,3,5,etc.) followed by the even numbered game on the same side. Players can easily push down all the cards to bring a new game into view.



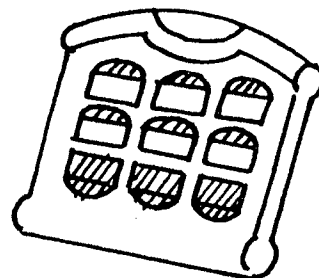
- If you choose to play an even numbered game followed by the odd numbered game on the same side of the card, use the release lever on the back side of the Game Board to pull all the cards up together.



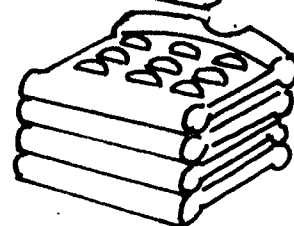
- Make sure all purple shades on each Game Board are raised so that the answers can be clearly seen.



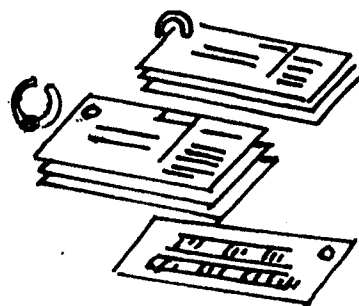
- For lower functioning players, begin the game with 3 or 6 words covered.



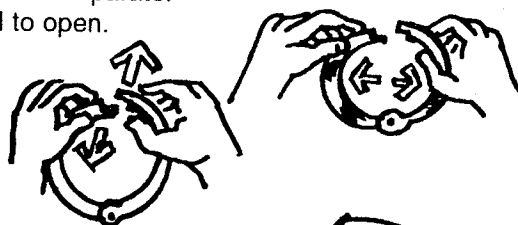
- Distribute a Game Board to each player.



- Select the appropriate set of Calling Cards for the game. Open the ring. Remove cards. Place nearby for use.



- To open ring: Grasp opposite sides. Push apart to separate. Then pull to open.



- Follow the script on page 3.



For best results, please follow this script every time when leading the activity.

1. Orient players to the game by saying:

"We are going to play a (new) board game today."

"We are going to read a clue. I want you to answer the clue out loud. If one of the words on your Game Board completes the clue, slide the purple shade down to cover that word".

- Demonstrate how to pull the shade down on the Game Board to cover a word then ask:

"Do you have any questions?"

2. Hold up a Calling Card to display the clue printed on the front of the card.

- Read the first clue out loud. Make sure all players understand the game procedure.

- For example, you may say:

"Here is the first clue, Neil Armstrong was the first man to walk on the..."

- Be sure to emphasize the fill-in-the-blank nature of the clue by pausing after the last word.

- Encourage players to answer the clue aloud.

3. If no one says the answer aloud, you can read the clue to the players again.

4. If no one still says the answer, you can use the rhyming clue on the back of the Calling Card that has a word that rhymes with the answer.

- So, you next might say:

"What rhymes with Noon?"

5. NOW show players the answer to the clue, which is printed on the back of the Calling Card. Read the answer out loud to them.

6. Remind players to slide the purple shade down over the answer if they have it on their Game Board.

- As needed, you may have to prompt players to locate the answer on their Game Board and slide down the shade to cover it.

7. To increase involvement, invite a player to read the next Calling Card clue aloud.

- To ensure that all players heard the clue:

Repeat the clue in a louder voice.

- If necessary, reposition the Calling Card, making sure that all players can see the clue clearly.

8. If no one says the answer out loud:

Go through steps 3, 4 and 5.

9. After players slide down the appropriate shade to cover the answer:

Encourage discussion using the "Talking Points" listed on the back of the Calling Card.

10. After one or more players have completed a game:

Continue having different players read the remaining Calling Cards and sliding down the shades over the appropriate answers.

11. When a player slides down all the appropriate shades on their Game Board:

Prompt him / her to shout "ALL COVERED!"

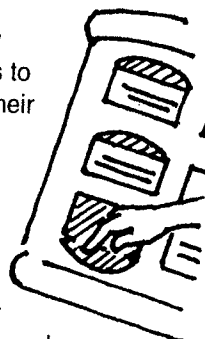
12. Game play is complete:

When all players have pulled down all their purple shades.



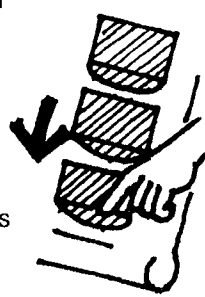
**NEIL ARMSTRONG
THE FIRST MAN**

**Healthy
Wealthy**



MOON

WISE



Checklist for leading the Memory Magic™ Activity

Follow the script on Page 3 every time you play the activity.

1. Hold up the first Calling Card, large print facing the players.
2. Read the first clue aloud, emphasizing the fill-in-the-blank nature of the clue.
3. Allow players to answer the clue.
4. If no one answers, repeat the clue a second time.
5. If still no one answers, use the rhyming clue on the back of the Calling Card.
6. Show players the answer printed on the back of the Calling Card.
7. Instruct players to pull the purple shade down over the answer if they have it on their Game Board.
8. START DISCUSSION USING THE TALKING POINTS ON THE BACK OF THE CALLING CARD ONCE EVERYONE HAS COVERED THE ANSWER.
9. For the remainder of the activity, ALLOW THE PLAYERS TO TAKE TURNS READING THE CLUES ALOUD, and then repeat Steps 3-7.

AT END OF THE ACTIVITY ASK...
"Did you have a good time playing the game?"
"Would you like to play again sometime?"

For in-service training, additional product or customer service please contact:

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Creative Action LLC

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The Memory Magic™ Activity was developed by Creative Action LLC in collaboration with the Myers Research Institute of Menorah Park Center for Senior Living. Made possible by Grant # 2R44AG17776 from the National Institutes of Health National Institute on Aging

MMISOI

Meeting Special
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Memory Magic™
Activity Set

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Check or Money Order

**RESPONSE TO MOTION TO AMEND
EXHIBIT B**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Application Serial No. 78/359,895
Filed: January 30, 2004
For the Mark: MEMORY MAGIC in International Class 28
Published in the Official Gazette: May 10, 2005 at TM 30

<p>HASBRO, INC.</p> <p>Opposer,</p> <p>v.</p> <p>CREATIVE ACTION LLC,</p> <p>Applicant</p>	<p>Opposition No. 91/166487</p>
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DECLARATION OF RONNI S. STERNS

RONNI S. STERNS, under penalty of perjury, declares as follows:

1. I am a principal of Creative Action LLC ("Creative Action").
2. I submit this declaration based on personal knowledge in response to Opposer's Motion to Amend Opposer's Notice of Opposition and to Suspend the Proceedings.
3. I have a Ph.D. in sociology.
4. I am personally familiar with all aspects of the MEMORY MAGIC game, including its development, its intended users, how it is marketed, how it is played, and the benefits that result from its play.
5. Creative Action has conducted research that indicates significant increases in levels of engagement and affect (mood) and significant decreases in problem behaviors among MEMORY MAGIC game participants while playing the

game compared to levels of engagement, affect and behavior problems when these same individuals are participating in other games and activities.

6. I verified the interrogatory answers that are attached as Exhibit 1 to the Declaration of Wayne D. Porter, Jr. ("Porter Declaration") and that were served on Hasbro, Inc.

7. I am familiar with the documents attached as Exhibit 2 to the Porter Declaration that were served on Hasbro, Inc. The pages bearing document numbers 455-466 comprise a marketing brochure that was publicly distributed by Creative Action starting in 2005. The pages bearing document numbers 471-474 comprise instructions for playing the MEMORY MAGIC game that were distributed with the game to customers who had purchased the game starting in 2005. The page bearing document number 546 is a flyer that was displayed at a trade show in 2005.

8. The MEMORY MAGIC product is not a "kit," which I understand to mean a collection of articles usually for personal use or a packaged collection of related material. The product more appropriately is called a "therapeutic game."

9. The MEMORY MAGIC product is intended for use by nursing homes and other elderly care facilities, but it is not so limited. It can be used in any environment, including the home.

10. The MEMORY MAGIC product is not limited to use by elderly persons with memory loss. While many users can be expected to be elderly, the product can be used by anyone with memory loss.

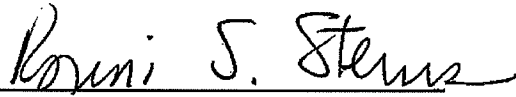
11. The MEMORY MAGIC product does not require the participants' use of boards. While the use of boards facilitates play of the game, their use is not necessary.

12. The MEMORY MAGIC product is a non-competitive diversion and amusement, which Creative Action believes to be a game. Creative Action has variously and interchangeably referred to and marketed the MEMORY MAGIC product as an activity, an activity set, or a game.

13. Creative Action does not inform its customers that Medicare and Medicaid reimbursement codes can be used for purchase of the MEMORY MAGIC product, only for time therapists spend using the product during speech therapy, occupational therapy and restorative nursing.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 25, 2010 in Akron, Ohio.


Ronni S. Sterns